

PROPOSED REDRAFT OF PILOT RULES

March 29~~10~~, 2000

CHAPTER 311

INTERIM RULES GOVERNING ELECTRIC AND NATURAL GAS RETAIL ACCESS PILOT PROGRAMS

20 VAC 5-311-10. Purpose and Definitions.

A. The purpose of the rules adopted in this chapter is solely to govern electric and natural gas retail access pilot programs conducted by Virginia electric and natural gas public utilities.

B. As used in this chapter:

"Affiliated competitive service provider" means a competitive service provider that is a separate legal entity that controls, is controlled by, or is under common control of, a local distribution company or its parent. For the purpose of this chapter, any unit or division created by a local distribution company for the purpose of ~~acting as~~ ~~providing~~ competitive energy services ~~provider~~ shall be treated as an affiliated competitive service provider and shall be subject to the same rules and regulations.

"Aggregator" means a person who, as an agent or intermediary, (i) offers to purchase, or purchases, electric energy or natural gas, or both, or (ii) offers to arrange for, or arranges for, the purchase of electric energy or natural gas, or both, for sale to, or on behalf of, two or more retail customers not controlled by or under common control with such person. The following activities shall not, in and of themselves, make a person an aggregator under this chapter: (i) furnishing legal services to two or more retail customers, suppliers or aggregators; (ii) furnishing educational, informational, or analytical services to two or more retail customers, unless direct or indirect compensation for such services is paid by an aggregator or supplier of electric energy or natural gas, or both; (iii) furnishing educational, informational, or analytical services to two or more suppliers or aggregators; (iv) providing default service under § 56-585 of the Code of Virginia; (v) conducting business as a competitive service provider licensed under 20 VAC 5-311-50; and (vi) engaging in actions as a retail customer, acting in common with one or more other such retail customers, to issue a request for proposal or to negotiate a purchase of electric energy or natural gas, or both, for consumption by such retail customers. ~~An aggregator may act in one or both of the following capacities:~~

~~"Competitive service provider aggregator" means an aggregator who represents one or more competitive service providers and receives compensation for its services from the competitive service provider or providers.~~

~~"Buyer aggregator" means an aggregator who represents two or more retail customers or prospective retail customers, and who may be compensated for such~~

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~~services by the retail customers, but does not receive compensation from a competitive service provider.~~

“Business day” means any calendar day or computer processing day, or both, in the Eastern U.S. time zone, in which the general office of the applicable local distribution company is open for business with the public.

"Commencement of the pilot program" means the date established by the State Corporation Commission for the beginning of each pilot program.

"Competitive energy service" means the retail sale of electricity or natural gas, or both, **or any other competitive service approved by the State Corporation Commission** as part of a retail pilot program by an entity other than the local distribution company as a regulated utility.

"Competitive service provider" means a person who sells or offers to sell a competitive energy service **within the Commonwealth**. This term includes affiliated competitive service providers, as defined above, but does not include a party that supplies electricity or natural gas, or both, exclusively for its own consumption or the consumption of one or more of its affiliates.

"Customer choice" means the opportunity for a retail customer in the Commonwealth to purchase a competitive energy service from any licensed competitive service provider seeking to sell such services to that customer.

"Electronic Data Interchange" (EDI) means computer-to-computer exchange of business information using common standards for high volume electronic transactions.

"Local Distribution Company" means an entity regulated by the State Corporation Commission that owns or controls the distribution facilities required for the transportation and delivery of electricity or natural gas to the end-user.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other private legal entity, and the Commonwealth or any city, county, town, authority or other political subdivision of the Commonwealth.

"Transmission provider" means an entity regulated by the Federal Energy Regulatory Commission that owns or operates, or both, the transmission facilities required for the delivery of electricity or natural gas to the local distribution company or end-user.

“Virginia Electronic Data Transfer Working Group” (VAEDT) means the group of representatives from investor-owned electric utilities, electric cooperatives, the Staff of the State Corporation Commission, the Office of Attorney General, and natural gas utilities and suppliers, whose objective is to formulate guidelines and practices for the exchange of information during retail access pilot programs.

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20 VAC 5-311-20. Competitive service providers.

A. Each competitive service provider shall comply with the following requirements with respect to its relationship with its **potential or actual** retail customers:

1. A competitive service provider shall, in any advertisements, ~~or~~ marketing materials, **or customer service contracts** provide accurate, understandable information, **in a manner that is not misleading.** ~~including information regarding pricing, terms and conditions.~~
2. **Solicitations, A**advertising, and marketing materials **shall contain a clear and conspicuous notice of an address or toll-free telephone number to contact for additional information.** ~~regarding price or cost shall include, in separate paragraphs, boxes or charts~~**Such available additional information shall include:** ~~-(i) an estimated total annual bill for a residential customer who uses, on a monthly basis, 1,000 kWh of electricity or 7.5 Mcf or 75 therms of natural gas, including all fees and minimum or fixed charges, but~~ exclusive of any non-recurring financial or non-financial incentives; **or** ~~(ii) the total average price per kWh, Mcf, or therm based on the annual bill; or (iii) similar~~other information, ~~if any,~~ that will allow prospective customers to reasonably compare the full price of service if the competitive energy service is purchased from the competitive service provider to the full price of service charged by the local distribution company;. **Such available additional information shall also include:** ~~(iv) the value of any non-financial incentives or non-recurring financial incentives; (vii) a statement regarding provisions for termination by the customer and by the competitive service provider; and (viii) a statement of any minimum contract terms, minimum usage requirements, any required deposit, any applicable fees such as start-up fees or cancellation fees, and any minimum or fixed charges.~~
3. A competitive service provider, in arranging to provide service to a new customer, shall comply with the following requirements:
 - a. A competitive service provider shall enroll a customer only after the customer has **affirmatively** authorized such enrollment. **A competitive service provider shall maintain adequate records allowing it to verify a customer's enrollment authorization. Examples of adequate records of enrollment authorization include:** ~~The competitive service provider shall provide for verification of a customer's enrollment in one or more of the following ways:~~ (i) a written agreement signed by the customer; (ii) a written statement by an independent third party who witnessed or heard the customer's verbal commitments; (iii) a ~~tape~~ recording of the customer's verbal commitment; or (iv) electronic data exchange, provided that the competitive service provider can show that the electronic transmittal of a customer's authorization originated with the customer..~~At a minimum~~s **Such verification authorization records** shall contain the customer's name and address; the date the authorization was obtained; the name of the product, pricing plan, or service that is being subscribed; and acknowledgment of

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any switching fees, minimum contract terms or usage requirements, or cancellation fees. ~~Such Verification~~**authorization records of authorization** shall be retained for at least 12 months **after enrollment** and must be provided within five business days upon request by the customer or the ~~s~~Staff of the State Corporation Commission. ~~These~~**Such verification** procedures are not required where an existing customer moves to a new address and wishes to continue **service** with the same provider, provided that the competitive service provider is licensed to provide service to the customer's new location.

b. Upon obtaining the customer's authorization pursuant to ~~the subsection a. above and after the rescission period of three business days pursuant to 20 VAC 5-311-20 A-6,~~ the competitive service provider shall send, **contemporaneously:** (i) an enrollment request to the local distribution company consistent with the terms and conditions of the local distribution company's **pilot program or tariff** applicable to pilot **tariff as approved by the State Corporation Commission** ~~programs~~ and (ii) **a written contract to the customer.** ~~The local distribution company shall, within one business day, mail notification to the customer advising of the enrollment request and the date service commences. Such materials may be hand-delivered, mailed or electronically transmitted, and shall be deemed to have been received on the date they are hand-delivered or electronically transmitted or three business days after the date they are mailed. The customer shall have 10 calendar days from the date notification is mailed to advise the local distribution company of an unauthorized enrollment. See 20 VAC 5-311-30 B-4 for related provision.~~

c. Any customer that cancels an enrollment pursuant to the procedures of 20 VAC 5-311-30 B 4 shall be deemed to have withdrawn from the contract with that competitive service provider, and shall incur no penalty or other obligation for doing so. Such contract shall thereupon be considered void from its inception and of no further effect.

de. The competitive service provider shall commence service to a customer on the date **provided in the local distribution company's pilot program or applicable pilot tariff as approved by the State Corporation Commission.** ~~of the first regularly scheduled meter reading that occurs at least 15 calendar days after the date notification is mailed to the customer by the local distribution company. The competitive service provider may request and pay for a special meter reading, in which case the enrollment may become effective on the date of the special meter reading consistent with the local distribution company's pilot program or applicable pilot tariff as approved by the State Corporation Commission.; however, a special meter reading shall not occur until at least 15 calendar days after the date notification is mailed by the local distribution company. The local distribution company shall perform the requested special meter reading as promptly as working conditions permit.~~

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~~4. A competitive service provider shall provide to each customer a written contract which may be hand-delivered, mailed, or electronically transmitted. A customer or prospective customer shall be deemed to have received a service contract on the date the contract is hand-delivered or three business days after the date the contract was mailed or electronically transmitted.~~

45. At a minimum, all customer service contracts shall include: (i) the price or, if the exact price cannot feasibly be specified, an explanation of how the price will be calculated and any other **applicable fees**~~pertinent pricing terms~~; (ii) the length of the service contract; (iii) provisions for termination by the customer and by the competitive service provider; (iv) a statement of any minimum contract terms, minimum usage requirements, minimum or fixed charges, and any required deposit; (v) any applicable fees including, but not limited to start-up fees, cancellation fees, late payment fees, and fees for checks returned for insufficient funds; (vi) a description of the dispute resolution procedures required pursuant to 20 VAC 5-311-20 A 810.; ~~(vii) a statement informing a prospective customer of the right to withdraw from the contract, without incurring any penalty or other obligations, within three business days commencing with the customer's receipt of a written contract; and (viii) in a conspicuous place, confirmation of the customer's request for enrollment and the approximate date the customer's service will commence as determined pursuant to 20 VAC 5-311-20 A 3 c.~~

~~6. A competitive service provider shall provide a period of three business days during which a customer may withdraw from the contract without incurring any penalty or other obligations. Such period shall commence with the customer's receipt of a written contract. See 20 VAC 5-311-20 A 4 for related provision.~~

57. A competitive service provider claiming its offerings possess unusual or special attributes shall maintain documentation to substantiate any such claims. Such information may be made generally available through electronic means, and a written explanation shall be provided promptly upon request of any customer, prospective customer, competitive service provider, aggregator, local distribution company, or the sStaff of the State Corporation Commission.

68. In the event a competitive service provider collects security deposits or prepayments, such funds shall be held in escrow in Virginia, and the competitive service provider shall provide to the State Corporation Commission ~~and the customer~~ the name and address of the entity holding such deposits or prepayments.

79. A competitive service provider requiring a deposit or prepayment from a customer shall limit the amount of the deposit or prepayment to the equivalent of a customer's estimated liability for no more than two months' purchase of ~~energy~~ services from the competitive service provider by that customer.

810. A competitive service provider shall have in place explicit dispute resolution procedures and clearly identify the addresses and phone numbers of persons authorized to assist customers when they have a complaint.

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~~911.~~ A competitive service provider shall furnish to customers a 24-hour toll-free telephone numbers **to call: (i) in a service emergency and** ~~-(iii) for other customer inquiries during normal business hours regarding services provided by the competitive service provider, and (ii) that directs the customer where to call in a service emergency.~~ The 24-hour toll-free telephone numbers shall be stated on all customer-billing statements.

102. A competitive service provider shall adequately safeguard customer information, including payment history, unless the customer **affirmatively** authorizes disclosure or unless the information to be disclosed is already in the public domain. This provision, however, shall not restrict the disclosure of credit and payment information as currently permitted by applicable federal and state statutes.

113. A competitive service provider may change the pricing terms and conditions of its service contract only pursuant to the terms of the service contract and subject to the provisions of this chapter, and upon at least 30 days' written notice to the customer or customers. Such notice shall be set forth in a conspicuous written statement entitled "Notice of New Terms." The customer may terminate the contract within said 30-day period by providing notice to the competitive service provider.

124. A competitive service provider may include provisions in its service contracts that provide for automatic contract renewal **upon the same terms and conditions** ~~for a total period of no more than two years from the date of the initial enrollment~~, provided that, in any event, the contract shall provide that it will terminate if the competitive service provider's license expires or is suspended or revoked. The competitive service provider shall notify its customers at least ~~30~~**45** days ~~in advance~~ prior to the termination ~~or renewal date~~ of the service contract.

135. In the event that a competitive service provider's services are terminated for any reason other than by a customer's decision to transfer to a different supplier, the competitive service provider shall send written notification of such termination to the customer at least 30 days prior to the ~~next meter read~~ date that service to the customer **is scheduled to** ~~will be~~ terminated. ~~See Rules 20 VAC 5-311-20 B 7, 20 VAC 5-311-30 A 5, and 20 VAC 5-311-30 B 5 for related provisions.~~

B. Each competitive service provider shall comply with the following rules with respect to its relationship with the local distribution companies and transmission providers:

1. A competitive service provider shall submit to the local distribution company the full name of the competitive service provider, the type of entity (e.g., partnership or corporation), physical street and mailing addresses, and the names, telephone numbers, and e-mail addresses of appropriate contact persons, including a 24-hour emergency ~~contact~~ telephone number ~~and emergency contact person~~, and the name, title, and address of **any** registered agent in Virginia for service of process.

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2. A competitive service provider shall furnish the local distribution company and the transmission provider proof of licensure to provide competitive energy services in the Commonwealth from the State Corporation Commission.
3. A competitive service provider shall adhere to all requirements of schedules, terms, and conditions of service under the rate schedules and tariffs, approved by the State Corporation Commission or the Federal Energy Regulatory Commission, of the local distribution company and the transmission provider, **as applicable**.
4. a. A competitive service provider selling electricity or natural gas, or both, at retail shall:
 - (1) procure sufficient electric generation and transmission service or sufficient natural gas **supply and** delivery capability, or both, to serve the requirements of its firm customers;
 - (2) abide by any applicable rule or procedure of any institution charged with ensuring the reliability of the electric or natural gas systems, including the State Corporation Commission, the North American Electric Reliability Council, **or** the Federal Energy Regulatory Commission; ~~and any other entity identified as such by the State Corporation Commission;~~
 - (3) comply with any obligations that the State Corporation Commission may impose to ensure **access to** sufficient availability of capacity; and
 - (4) comply with generally accepted technical protocols applicable to particular competitive services ~~as approved by the State Corporation Commission.~~
- b. In the event of a failure to fulfill the obligations set forth in the subsection above, the competitive service provider shall be responsible for **any applicable** penalties as authorized or required by the regulator with jurisdiction over the matter. ~~The imposition of penalties shall not preclude the State Corporation Commission from taking any further actions that it may deem necessary.~~
5. An affiliated competitive service provider may use the name or logo of its affiliated local distribution company in advertising and solicitation materials. ~~unless the State Corporation Commission determines that such use is misleading. Upon request by Staff, A~~an affiliated competitive service provider ~~making~~**desiring to make** such use shall submit **representative samples of its** ~~the~~ advertising and solicitation materials to the State Corporation Commission. ~~no later than 30 days before commencing such use. Any such use shall be accompanied by a disclaimer clearly disclosing that the (i) the affiliated competitive service provider is not the same company as the local distribution company; (ii) the rates and products offered by the affiliated competitive service provider are not regulated by the State Corporation Commission; and (iii) the safety, reliability, and cost of distribution service received by customers of the affiliated competitive service provider will be no different than that received by~~

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~~customers of a competitive service provider that is not affiliated with the local distribution company. A disclaimer that clearly and conspicuously discloses that the affiliated competitive service provider is not the same company as the local distribution company shall accompany any such use. Such disclaimers shall not be required, however, on company vehicles, clothing, or trinkets, writing instruments, or similar promotional materials. Upon complaint or Staff motion, the State Corporation Commission may, after notice and an opportunity for hearing, make a determination whether any such usage is misleading, and if so, take appropriate corrective actions.~~

~~6. An affiliated competitive service provider shall operate independently of its affiliated local distribution company and shall abide by the following prohibitions with respect to any competitive service it offers in the certificated service territory of the affiliated local distribution company:~~

~~a. An affiliated competitive service provider shall not allow its employees who have responsibility for (i) the operations or reliability functions of the electric generation or natural gas supply system and (ii) customer service, accounting, or billing to engage in similar activities for or on behalf of its affiliated local distribution company.~~

~~b. An affiliated competitive service provider shall not obtain goods and services from a third party entity if that entity allows its same employees to provide services relating to (i) the operations or reliability functions of the electric generation or natural gas supply system or (ii) customer services, accounting, or billing for both the local distribution company and its affiliated competitive service provider.~~

~~c. An affiliated competitive service provider shall maintain separate offices from its affiliated local distribution company. If an affiliated competitive service provider believes that it is not practicable or is prohibitively expensive to separate its offices from the offices of its affiliated local distribution company, the affiliated competitive service provider shall file a request for exemption no later than 120 days prior to the day it proposes to begin to provide service, accompanied by a description of what actions it has taken to achieve and ensure separation.~~

~~d. An affiliated competitive service provider shall take steps necessary to ensure that any of its employees who was an employee of the affiliated local distribution company shall not provide the affiliated competitive service provider with proprietary property or information of the affiliated local distribution company, or~~

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~~use proprietary property or information of the affiliated local distribution company on behalf of the affiliated competitive service provider.~~

6e. An affiliated competitive service provider shall document each occasion that an employee of its affiliated local distribution company, **or of the transmission provider that serves its affiliated local distribution company**, becomes one of its employees and each occasion that one of its employees becomes an employee of its affiliated local distribution company **or the transmission provider that serves its affiliated local distribution company**. **Upon Staff's request, such information and shall be filed** ~~file a quarterly report with the State Corporation Commission identifying each such occasion. Such information. Such report shall include a listing of each employee transferred and a brief description of each associated position and responsibility. , if applicable, a description of the steps taken by the affiliated competitive service provider to achieve the separation required by subsection d above.~~

7. In the event that a competitive service provider's services are terminated for any reason other than a customer's decision to transfer to a different supplier, the competitive service provider shall provide notice of the termination, **by any means specified by the VAEDT, to the local distribution company** at least 30 days prior to the ~~next meter read date that the competitive service provider's service to the customer is scheduled to will be terminated. to the local distribution company by means of the appropriate standardized electronic transaction, or EDI. See 20 VAC 5-311-20 A-15, 20 VAC 5-311-30 A-5, and 20 VAC 5-311-30 B-5 for related provisions.~~

C. Competitive service providers shall be subject to the following general requirements:

1. Each person seeking to engage in the activities of a competitive service provider shall obtain a license from the State Corporation Commission prior to commencing such activities.
2. A competitive service provider shall comply with all initial and continuing requirements of the State Corporation Commission's licensure process and any reasonable registration processes required by the local distribution company and the transmission provider. Should the Commission determine, upon complaint of any ~~affected~~ **interested** person **or the Attorney General** or upon its own motion, that a competitive service provider has failed to comply with any of the requirements of this chapter, the State Corporation Commission may, after providing due notice and an opportunity for a hearing, suspend or revoke the competitive service provider's license or take any other actions permitted by law or regulations as it may deem necessary to protect the public interest.
3. A competitive service provider shall, **to the maximum extent feasible**, adhere to standards **practices** for exchanging data and information in an electronic medium ~~upon implementation of such standards as may be as may be specified by the VAEDT and as specified in the local distribution company's pilot program or applicable pilot tariff as approved~~ **determined by the State Corporation Commission. to be appropriate and A**

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competitive service provider shall **cooperate with the VAEDT** to comply on a continuing basis with **the development and implementation of such** EDI requirements.

4. A competitive service provider providing electric service shall annually file a report, **to be of public record**, with the State Corporation Commission's Division of Energy Regulation -stating: **(i)** -to the extent feasible, fuel mix, and emissions data on at least an annualized basis; ; or **(ii)** ~~shall provide to the staff an explanation as to why it is not~~ feasible to submit any portion of such data.

5. A competitive service provider shall retain customer billing and account records and complaint records for at least three years.

6. Each affiliated competitive service provider shall maintain separate books of accounts and records.

7. The competitive service provider shall not:

a. Suggest that the services provided by the local distribution company are of any different quality when electricity and/or natural gas is purchased from a particular competitive service provider; or

b. Suggest that the competitive energy services provided by a competitive service provider are being provided by a local distribution company rather than the competitive service provider.

20 VAC- 5-311-30. Local distribution companies.

A. Each local distribution company shall comply with the following rules with respect to its relationship with competitive service providers:

1. The local distribution company shall provide service, information and products to all competitive service providers licensed in Virginia on terms and conditions as set forth in this chapter, as provided in applicable tariffs, and as approved by the State Corporation Commission as part of a pilot program.

2. The local distribution company shall not give undue preference to an affiliated competitive service provider over the interests of any other competitive service provider related to the provision of electric transmission, distribution, generation, or ancillary services, or natural gas supply or capacity. For purposes of this rule, "undue preference" shall mean a preference that is reasonably likely to affect adversely the development of effective competition **within the Commonwealth**.

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3. The local distribution company shall ~~only~~ provide information related to the transmission, distribution or provision of electricity, ancillary services, ~~and/or~~ natural gas supply or capacity to an affiliated competitive service provider ~~that~~ **only if it makes such information** available simultaneously, through an electronic bulletin board, **or similar means of public dissemination**, to all other competitive service providers licensed to conduct business in Virginia. **Nothing in this rule shall require the local distribution company to disseminate to all competitive service providers information requested and deemed competitively sensitive by a competitive service provider and supplied by the local distribution company. This rule shall not apply to daily operational data provided by the local distribution company to any competitive service provider in the ordinary course of conducting business.**

4. The local distribution company shall, upon request by a competitive service provider, provide such competitive service provider with the addresses of eligible pilot customers on a non-discriminatory basis consistent with the local distribution company's pilot tariff as approved by the State Corporation Commission. No other customer information about eligible pilot customers shall be provided to competitive service providers unless the customer **affirmatively** authorizes disclosure or unless the information to be disclosed is already in the public domain. This provision, however, shall not restrict the disclosure of credit and payment information as currently permitted by applicable federal and state statutes.

5. The local distribution company shall not accept an enrollment request from a competitive service provider to switch a customer if that customer's account is subject to a pending disconnect notice from the local distribution company.

~~56. In the event the local distribution company is notified by a competitive service provider that the competitive service provider will terminate service to a customer for any reason other than the customer's decision to transfer to a different competitive service provider, the local distribution company shall, normally within two business days, respond to the competitive service provider by any means specified by the VAEDT appropriate EDI transaction that will acknowledge (i) receipt of the competitive service provider's notice, and (ii) the date that the competitive service provider's service to the customer will be scheduled to terminate. See 20 VAC 5-311-20 A-15, 20 VAC 5-311-20 B-7 and 20 VAC 5-311-30 B-5 for related provisions.~~

~~67. Joint advertising and marketing shall be prohibited between the local distribution company and any competitive service provider unless made available to all competitive service providers upon the same price, terms, and conditions.~~

78. The local distribution company shall not condition the provision of any distribution services on the purchase of any other service or product from it or any of its affiliates except as expressly permitted by the State Corporation Commission.

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9. A local distribution company shall operate independently of any affiliated competitive service provider and shall observe the following rules with respect to any competitive energy service offered by such affiliated competitive service provider in the local distribution company's certificated service territory:

a. Not later than the commencement of the pilot program, or the date of licensure of such affiliated competitive service provider under these rules, whichever is later, the local distribution company shall develop and implement internal controls designed to ensure that it and its employees who are engaged in the (i) merchant operations, transmission, or reliability functions of the electric generation or natural gas supply systems, or (ii) customer service, sales, marketing, accounting or billing functions, have no such access to, or connection with, similar functions which are performed by or on behalf of such an affiliated competitive service provider as would give such affiliated competitive service provider an undue advantage over non-affiliated competitive service providers. For purposes of this rule, "undue advantage" shall mean an advantage that is reasonably likely to affect adversely the development of effective competition within the Commonwealth.

b. An affiliated local distribution company shall file with the Director of the State Corporation Commission's Division of Public Utility Accounting, a listing and description of all internal controls required in subsection a. above, not later than ten days after their implementation or subsequent modification.

c. A local distribution company shall document each occasion that an employee of its affiliated competitive service provider becomes one of its employees and each occasion that one of its employees becomes an employee of its affiliated competitive service provider. Upon Staff's request, such information shall be filed with the State Corporation Commission identifying each such occasion. Such information shall include a listing of each employee transferred and a brief description of each associated position and responsibility.

108. With respect to affiliate transactions, the local distribution company shall abide by the following ~~restrictions~~:

a. The local distribution company shall be compensated at the greater of fully distributed cost or market price for all non-tariffed services, facilities, and products provided to an affiliated competitive service provider. An affiliated competitive service provider shall be compensated at the lower of fully distributed cost or market price for all **non-tariffed services, facilities, and products provided to the local distribution company. If market price data are unavailable, **non-tariffed** services, facilities and products shall be compensated at fully distributed cost and the local distribution company shall document its efforts to determine market price data and its basis for concluding that such price data are unavailable.**

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Notification of a determination of the unavailability of market price data shall be filed with the Director of the State Corporation Commission's Division of Public Utility Accounting within 30 days of the transaction.

b. The local distribution company shall file ~~quarterly~~**semi-annually for the duration of the pilot program**, with the **Director of the** State Corporation Commission's Division of Public Utility Accounting, a report that shall, at a minimum, include: the amount and description of each **type of non-tariffed service provided to or by** ~~transaction with~~ an affiliated competitive service provider; accounts ~~debited~~**charged** or credited; and ~~support for the compensation basis used, i.e., market price or fully distributed cost.~~ **The local distribution company shall maintain the following documentation for each agreement and arrangement where such services are provided to or by an affiliated competitive service provider and make such documentation available to Staff upon request: (i) component costs (i.e., direct or indirect labor, fringe benefits, travel or housing, materials, supplies, indirect miscellaneous expenses, equipment or facilities charges, and overhead); (ii) profit component; and (iii) comparable market values and documentation.** ~~Documentation supporting all transactions between a local distribution company and its affiliated competitive service provider, including all fully allocated cost and market price data, as well as documentation supporting the unavailability of market price data, shall be maintained for a minimum of three years, and shall be provided to the staff of the State Corporation Commission upon request. This provision shall not affect any of the obligations of local distribution companies under Chapter 4 (§ 56-76 et seq.) of Title 56 of the Code of Virginia.~~

119. ~~Neither~~ **The local distribution company** ~~nor a competitive service provider shall not:~~

- a. Suggest that the services provided by the local distribution company are of any different quality when electricity and/or natural gas is purchased from a particular competitive service provider; or
- b. Suggest that the competitive energy services provided by a competitive service provider are being provided by a local distribution company rather than the competitive service provider.

120. The local distribution company may require reasonable financial security from the competitive service provider to financially safeguard the local distribution company and its customers from losses or additional costs incurred due to the non-performance of the competitive service provider. Such financial security may include a letter of credit, a deposit in an escrow account, a prepayment arrangement, or other arrangements that may be mutually agreed upon by the local distribution company and the competitive service provider. ~~However, the amount of such financial security shall not exceed two months of expected sales for the competitive service provider priced at the projected market price~~

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~~for generation as determined by the State Corporation Commission pursuant to § 56-583 of the Code of Virginia. However, the amount of such financial security shall be commensurate with the level of risk assumed by the local distribution company, as determined by the parameters described in the local distribution company's pilot program or applicable pilot tariff as approved by the State Corporation Commission. Such security shall be used to offset the cost of replacement energy supplied by the local distribution company in the event of the competitive service provider's non-performance. -Disagreements with respect to financial security shall be subject to the dispute resolution procedures established pursuant to 20 VAC 5-311-30 A 13.1-~~

134. The local distribution company shall establish, and file for State Corporation Commission approval, dispute resolution procedures to address complaints alleging violations of, **or disputes arising under**, the provisions of this chapter. The local distribution company shall make such filing no later than 90 days prior to the commencement of the pilot program.

142. The provisions of this chapter shall not be deemed to prohibit the local distribution company, in emergency situations, from taking actions it is otherwise authorized to take that are necessary to ensure public safety and reliability of the distribution system. The State Corporation Commission, upon a claim of inappropriate action, may investigate and take such corrective actions as may be appropriate.

15. The local distribution company shall, to the maximum extent feasible, adhere to standard practices for exchanging data and information in an electronic medium as may be specified by the VAEDT and as specified in the local distribution company's pilot program or applicable pilot tariff as approved by the State Corporation Commission. The local distribution company shall cooperate with the VAEDT to comply on a continuing basis with the development and implementation of EDI requirements.

B. Each local distribution company shall comply with the following rules with respect to its relationship with its retail customers:

1. The local distribution company shall provide pilot program information and facilitate enrollment of pilot customers pursuant to pilot programs approved by the State Corporation Commission.

2. The local distribution company shall **continue to allow customers to participate in its pilot program by selecting a competitive service provider until the maximum participation limits established and defined in its retail access pilot program, as approved by the State Corporation Commission, are fulfilled.** ~~accept enrollments until the maximum number of customers that can participate in the customer choice pilot~~

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~~program has been enrolled by competitive service providers pursuant to 20 VAC 5-311-20 A 3.~~

3. The local distribution company shall provide, pursuant to the prices, terms, and conditions of its tariffs approved by the State Corporation Commission, service to all customers who do not select a competitive service provider and to customers who chose a competitive service provider but whose service is terminated at the behest of the customer or by the competitive service provider for any reason during the pilot program period.

4. ~~A local distribution company shall transfer a pilot customer's service to a competitive service provider or between competitive service providers only in accordance with the requirements of this chapter.~~ Upon receipt of an enrollment request from a competitive service provider, **pursuant to 20 VAC 5-311-20 A 3 b**, the local distribution company shall, **normally** within one business day **of receipt of such notice, mail notification** ~~send written notice~~ to the customer advising of the enrollment request, ~~and the approximate date that the competitive service provider's service will begin.~~ **commences, and the procedure for cancelling such enrollment. Such notice shall be deemed to have been received by the customer three business days after the date of mailing. The customer shall have 10 calendar days from the date the customer receives such notification to advise the local distribution company that it wishes to cancel such enrollment.** ~~In the event the local distribution company is advised of an unauthorized enrollment~~ **cancellation request, the local distribution company shall, normally within one business day, notify the competitive service provider of the customer's cancellation and stop terminate the enrollment process. until the matter is resolved pursuant to the competitive service provider's dispute resolution procedures. The local distribution company also shall ~~send to promptly notify~~ the State Corporation Commission **a monthly report of all the customer's allegations such cancellation requests, which report shall include:** the approximate date of the ~~alleged unauthorized~~ enrollment, the identity of the competitive service provider, ~~and the name and address of the customer whose enrollment was allegedly unauthorized~~ **who cancelled such enrollment, and a brief statement of the reasons, if any, given by the customer for the cancellation.** ~~See 20 VAC 5-311-20 A 3 b for a related provision.~~**

5. In the event that the local distribution company is notified by a competitive service provider that a customer's service will be terminated ~~for any reason other than a customer's decision to transfer to a different competitive service provider,~~ the local distribution company, in addition to responding to the competitive service provider as required by 20 VAC 5-311-30 A 65, shall send written notification to the customer, **normally** within five business days, that it was so informed and describe the customer's opportunity to select a new supplier. The local distribution company shall inform the affected customer that if the customer does not select another competitive service provider, the local distribution company will ~~supply~~ **provide** the customer's generation or **natural gas supply.** ~~See 20 VAC 5-311-20 A 15, 20 VAC 5-311-20 B 7, and 20 VAC 5-311-30 A 5 for related provisions.~~

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6. Pilot program customer deposits held or collected by local distribution companies shall be for only those services provided by the local distribution company to customers participating in the pilot program.
7. Changes to terms and conditions concerning customer disconnection for non-payment shall be set forth in each local distribution company's pilot tariff approved by the State Corporation Commission.

20 VAC 5-311-40. Aggregators.

A. Each person seeking to act as an aggregator shall obtain a license from the State Corporation Commission prior to conducting business as an aggregator **within** the Commonwealth.

B. An aggregator shall abide by the following requirements as applicable:

1. ~~An competitive service provider~~ aggregator who is also the competitive service provider **or acting as an agent of a competitive service provider**, for one or more customers shall comply with all of the rules of this chapter applicable to competitive service providers. ~~with respect to such customers.~~
2. An aggregator shall, **in any-use advertisements, marketing materials, or customer service contracts** ~~ing and solicitation materials that contain~~ **provide** accurate, understandable information, **in a manner that is not misleading.** ~~including information regarding pricing, and any other terms and conditions of service that will enable the prospective customer to make an informed choice. All solicitations, advertising, and solicitation~~ **marketing materials shall contain -a clear and conspicuous notice of an address or toll-free telephone number to contact for additional information. Such available additional information shall be that specified by price or cost of the competitive energy services shall comply with the requirements of 20 VAC 5-311-20 A** 2.
3. An aggregator, **in arranging to provide service to a customer**, shall **comply with the requirements of 20 VAC 5-311-20 A 3 and 20 VAC 5-311-20 A 4.** ~~disclose in writing to prospective customers and include in each written contract the nature of the service to be provided, the length of the contract, the fees or prices that will be charged for such service, provisions for termination of the contract by the customer and the aggregator, and any other terms that are necessary for the prospective customer to make an informed choice in selecting an aggregator.~~
4. ~~An aggregator shall provide to each customer a written contract, which may be hand-delivered, mailed, or electronically transmitted. A customer or prospective customer~~

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~~shall be deemed to have received a contract on the date the contract is hand-delivered or three business days after the date the contract was mailed or electronically transmitted.~~

~~5. An aggregator shall provide a period of three days during which a customer may withdraw from the contract without incurring any penalty or other obligations. Such period shall commence with the customer's receipt of a written contract. See 20 VAC 5-311-40 B 4 for a related provision.~~

~~46. An aggregator who acts as both a buyer aggregator and a competitive service provider~~ An aggregator shall, prior to contracting with customers, provide written notice to the customers or prospective customers ~~that if the aggregator is, or expects to~~ **may be,** compensated by one or more competitive service providers. **Such notice shall identify such competitive service providers.**

~~7. When any aggregator engages in any activity or performs a function that the competitive service provider would have provided absent the aggregator's involvement, the aggregator shall comply with all rules of this chapter that would be applicable to the competitive service provider when engaging in the activity or providing the function. For example: (i) if such aggregator uses advertising and marketing materials supplied by the competitive service provider or that promote a particular competitive service provider's services, the aggregator must comply with 20 VAC 5-311-20 A 1 and 20 VAC 5-311-20 A 2; (ii) if such aggregator enrolls the customers or prospective customers in a particular program on behalf of the competitive service provider, the aggregator shall comply with 20 VAC 5-311-20 A 3, 20 VAC 5-311-20 A 4, 20 VAC 5-311-20 A 5, 20 VAC 5-311-20 A 6, and 20 VAC 5-311-20 C 2.~~

20 VAC 5-311-50. Licensure of competitive service providers and aggregators.

A. Each person applying for a license to conduct business as a competitive service provider or an aggregator shall file the original application with 15 copies thereof with the Clerk of the State Corporation Commission **and a courtesy copy with the Director of the State Corporation Commission's Division of Economics and Finance.** Each application shall include the following:

1. Legal name of the applicant as well as any trade name.
2. A description of the applicant's authorized business structure, identifying the state authorizing such structure and the date thereof; e.g., if incorporated, the state and date of incorporation; if a limited liability company, the state issuing the certificate of organization and the date thereof.
3. Name and business addresses of all corporate officers and directors, partners, LLC members, as appropriate.

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4. a. Physical business addresses and telephone numbers of the applicant's principal office and any Virginia office location or locations.

b. A list of states in which the applicant or an affiliate conducts business related to electricity or natural gas, the names under which such business is conducted, and a description of the businesses conducted.
5. Names of the applicant's affiliates and subsidiaries. If available, applicant shall satisfy this requirement by providing a copy of its most recent form 10K, Exhibit 21 filing with the Securities and Exchange Commission.
6. Disclosure of any affiliate relationships with local distribution companies or competitive service providers, or both, that conduct business in Virginia, and any agreements with the affiliated local distribution company that affect the provision of competitive energy services within the Commonwealth of Virginia.
- 7. If an affiliated competitive service provider, provide a description of internal controls it has designed or implemented to ensure that it and its employees who are engaged in the (i) merchant operations, transmission, or reliability functions of the electric generation or natural gas supply systems, or (ii) customer service, sales, marketing, accounting or billing functions, have no such access to, or connection with, similar functions which are performed by or on behalf of its affiliated local distribution company or affiliated transmission provider as would give such affiliated competitive service provider an undue advantage over non-affiliated competitive service providers. For purposes of this rule, "undue advantage" shall mean an advantage that is reasonably likely to affect adversely the development of effective competition within the Commonwealth.**
- 87.** Telephone number of the customer service department or the title and telephone number of the customer service contact person.
- 98.** Name, title, address, and telephone number, facsimile (fax) number, and e-mail address of the company liaison with the State Corporation Commission.
- 109.** Name, title, and address of registered agent in Virginia for service of process.
- 110.** If a foreign corporation, a copy of the applicant's authorization to conduct business in Virginia from the State Corporation Commission; if a domestic corporation, a copy of the certificate of incorporation from the State Corporation Commission.
- 124.** Sufficient information to demonstrate financial fitness commensurate with the service or services proposed to be provided. Applicant shall submit the following information related to general financial fitness:

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a. Applicant's audited balance sheet and income statement for the most recent fiscal year. Published financial information such as 10Ks and 10Qs should be provided, if available.

b. Proof of a minimum bond rating (or other senior debt) of "BBB-" or an equivalent rating by a major rating agency, or a guarantee with a guarantor possessing a credit rating of "BBB-" or higher from a major rating agency. In lieu of such minimum bond rating or guarantee, submit other evidence that will demonstrate the applicant's financial responsibility to the State Corporation Commission.

132. Identification of the geographic area or areas, the name of the local distribution company that is certificated to provide service in the area or areas and the associated pilot program or programs in which the applicant proposes to provide service, the type of service or services it proposes to provide, the class of customers to which it proposes to provide such services, and, if applying to sell electricity or natural gas, ~~(or both,)~~ at retail and, if feasible, **access to** the sources of supply it intends to use.

143. a. Disclosure of any (i) civil, criminal, or regulatory sanctions or penalties imposed within the previous five years against the company, any of its affiliates, or any officer, director, partner, or member of an LLC or any of its affiliates, pursuant to any state or federal consumer protection law or regulation; and (ii) felony convictions within the previous five years, which relate to the business of the company or to an affiliate thereof, of any officer, director, partner, or member of an LLC.

b. Disclosure of whether any application for license or authority to conduct the same type of business has ever been denied or whether any license or authority issued to it or an affiliate has ever been suspended, revoked or sanctioned.

c. If applicant has engaged in the provision of electricity or natural gas, or both, in Virginia or any other state, a report of all instances of violations of reliability standards that were determined to be the fault of the applicant, including unplanned outages, failure to meet service obligations, and any other deviations from reliability standards during the previous three years. The report shall include, for each instance, the following information: a description of the event, its duration, its cause, the number of customers affected, any reports, findings or issuance's by regulators or electric and natural gas system reliability organizations relating to the instance, any penalties imposed, and whether and how the problem has been remedied.

154. A \$250 pilot registration fee payable to the Clerk of the State Corporation Commission shall accompany each initial application. ~~(No annual registration fee will be required for pilot programs.)~~

165. Sufficient information to demonstrate technical fitness commensurate with the service or services to be provided, to include:

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- a. The applicant's experience.
- b. Identity of applicant's officers directly responsible for operations in the business to be conducted in Virginia and ~~their his or her~~ experience. ~~For example, an officer's experience~~ in the generation of electricity, procurement of electricity or natural gas, (or both), and the provision of energy services to retail customers.
- c. If applying to sell electricity or natural gas, or both, at retail, documentation of any membership or participation in regional reliability councils or regional transmission organizations.
- d. If applying to sell electricity or natural gas, or both, at retail, information concerning access to generation, supply and reserves. **For electric pilots, Such** information ~~should~~ **specifying** to the extent possible the expected sources of electricity or electricity procurement practices that will be used to support retail sales of electricity in Virginia. For natural gas pilots ~~participants~~, information regarding pipeline capacity and storage arrangements, including assurances that such suppliers will be able to meet the requirements of their essential human needs customers.

~~17~~**16**. Applicants other than aggregators, unless the aggregator will actually sell competitive energy services, shall file a copy of its dispute resolution procedure for approval by the State Corporation Commission.

B. The license application shall be signed by an officer with appropriate authority under penalty of perjury that all information supplied on the application form is true and correct, and that, if licensed, applicant will abide by all applicable regulations of the State Corporation Commission.

C. Each person applying for a license to conduct business as a competitive service provider shall simultaneously serve a copy of its application upon each **applicable** local distribution company located within the service territory or territories where the competitive service provider intends to operate.

D. Upon receipt of an application for a license to conduct business as a competitive service provider, the State Corporation Commission shall enter an order providing for notice **to appropriate persons** and an opportunity for a ~~hearing~~ **written comment** on the application.

E. A license to conduct business as a competitive service provider or an aggregator granted under this section shall expire upon the termination of the pilot program unless otherwise

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~~prescribed by~~ **ordered** ~~of~~ **by** the State Corporation Commission. The State Corporation Commission will consider extending or converting licenses issued under this chapter to allow licensed entities to continue to provide service after the termination of the pilot programs.

F. If any application fails in any respect to be complete, the application will not be regarded as filed. The State Corporation Commission will take no action on any application until deemed complete and filed.

20 VAC 5-311-60. General provisions.

A. Any request for a waiver of any of the provisions in this chapter shall be considered by the State Corporation Commission on a case-by-case basis, and may be granted upon such terms and conditions as the State Corporation Commission may impose.

B. Any electric or natural gas retail access pilot program previously approved by the State Corporation Commission and in operation prior to the adoption of these interim pilot rules, as well as any competitive service provider or aggregator participating in such programs, shall be required to comply with these rules within 120 days from adoption of these interim pilot rules or from the date of denial of a waiver request filed under 20 VAC 5-311-60 A, whichever is later.

~~CB.~~ Each local distribution company, competitive service provider, and aggregator shall comply with the standards for billing information set forth in § 56-592 D 1, § 56-592 D 2, and § 56-592 D 4 of the Code of Virginia and with such standards that may be established by the State Corporation Commission pursuant to § 56-592 D of the Code of Virginia.

~~DC.~~ A local distribution company, a competitive service provider, or an aggregator shall bear the responsibility for meter reading and billing as provided or allowed by law ~~and~~ **as approved** ~~required by order of~~ **by** the State Corporation Commission, ~~or both.~~

~~D. Where one consolidated bill is issued for all electric and/or natural gas services, a customer payment shall be applied to the charges of the local distribution company, the competitive service provider or providers, or tax liability, as designated by that customer. If the customer does not so designate, the payment shall be applied on a prorated basis to non-disputed outstanding charges for service provided by the local distribution company, the competitive service provider or providers, and tax liability in proportion to the total amount of each such item. Payments shall not be applied to any arrearages that existed prior to the customer's enrollment in the pilot program until all outstanding charges incurred during the pilot program~~

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~~period and owed to competitive service provider or providers, the local distribution company, or tax liability have been satisfied.~~

E. A customer payment received in partial payment of a single consolidated bill shall be applied to arrearages owed the local distribution company, then to arrearages owed the competitive service provider, then to current charges of the local distribution company, and then to current charges of the competitive service provider. The collection and remittance of taxes associated with such payments shall be pursuant to the provisions set forth in § 58.1-2901, electric service, and § 58.1-2905 A, natural gas service, of the Code of Virginia.

FE. ~~AA~~ competitive service provider ~~or~~ and an aggregator shall inform the State Corporation Commission within 30 days of the following: ~~-(i) inform the State Corporation Commission of any change in its name, address and telephone numbers; within 30 days of the change or changes; (ii) any information contained in its application that has changed regarding its affiliate status with a local distribution company; and (iii) update any changes to information provided pursuant to 20 VAC 5-311-50 A 14a. contained in its application that has changed, within 30 days of such change, regarding any (1) civil, criminal, or regulatory sanctions or penalties imposed within the previous five years against the company, any of its affiliates, or any officer, director, partner, or member of an LLC or any of its affiliates, pursuant to any state or federal consumer protection law or regulation; and (2) felony convictions within the previous five years, which relate to the business of the company or to an affiliate thereof, of any officer, director, partner, or member of an LLC.~~

GF. The State Corporation Commission shall have the right at all times to inspect the books, papers, records and documents, and to require special reports and statements, of any person to which these rules apply, other than a retail customer, competitive service provider regarding qualifications to conduct business within the Commonwealth, in support of affiliate transactions, to investigate allegations of violation of these interim pilot rules, or to resolve a complaint filed against a competitive service provider. and to require such persons to provide special reports and statements, under oath at the discretion of the State Corporation Commission, concerning their businesses subject to these rules.

HG. These rules may be enforced by the State Corporation Commission by any means authorized under any applicable law or regulation. Enforcement actions may specifically include, without limitation, the refusal to issue any license for which application has been made, and the refusal to renew or the revocation or suspension of any license previously granted. Any person aggrieved by a violation of these regulations may pursue any civil relief that may be available under state or federal law, including, without limitation, private actions for enforcement of these regulations, without regard to or first pursuing the remedies available from the Commission hereunder.